



U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

September 20, 2004

James L. Waybright, President
Virginia J. Starcher, Commissioner
Donald G. Stephens, Commissioner
Jackson County Commission
Jackson County Courthouse
Ripley, West Virginia 25271

Re: *Public Comment on Proposed Amended Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed May 26, 2004)*

Dear President Waybright and Commissioners Starcher and Stephens:

This letter responds to your August 11, 2004, comment on the proposed Amended Final Judgment (or "AFJ") in this case. The proposed Amended Final Judgment, if entered by the Court, would resolve the United States's serious concerns that Alcan's acquisition of Pechiney would substantially lessen competition in the sale of brazing sheet, an aluminum alloy used by auto parts makers throughout the nation to manufacture radiators, heaters, and air conditioning units for motor vehicles. *See* Complaint, ¶¶ 1-3, 19-24, and 27-30; Revised Competitive Impact Statement, pp. 4-9. The Amended Final Judgment requires Alcan to divest either its own or Pechiney's "brazing sheet business."¹ AFJ, § IV(A). Alcan's brazing sheet business includes Alcan's aluminum rolling mills in Oswego, New York, and Fairmont, West Virginia, which produce the brazing sheet sold by Alcan in North America. AFJ, § II(F). Pechiney's brazing sheet business includes its aluminum rolling mill in Ravenswood, West Virginia, which makes the brazing sheet sold by Pechiney in North America. AFJ, § II(E). Prompt divestiture of either brazing sheet business to a viable new competitor would advance the paramount public interest in competitive prices and continued high quality and innovation in the brazing sheet market by quickly restoring the rivalry that existed in domestic sales of this crucial material before Alcan's acquisition of Pechiney. To help ensure that

¹The initial settlement only would have required Alcan (or a court-appointed trustee) to divest Pechiney's brazing sheet business. The amended settlement would also permit Alcan to restore competition by selling (or spinning off) its own brazing sheet operations. Alcan has indicated, however, that it will sell its own brazing sheet operations only as part of a major corporate reorganization, an undertaking driven, at least in part, by business considerations unrelated to Alcan's acquisition of Pechiney. *See* Revised Competitive Impact Statement, n. 3.

the proposed divestiture is expeditiously completed and competition restored, the Amended Final Judgment provides that if Alcan does not complete its sale of either brazing sheet business to an acceptable purchaser by the established deadline, the Court may appoint a trustee to complete the divestiture of Pechiney's brazing sheet business. AFJ, § V(A).

Alcan already has taken steps to divest its own brazing sheet business by arranging to spin it off to the company's shareholders along with many of Alcan's other domestic and foreign businesses. Under the terms of the Amended Final Judgment, however, there is a possibility that Alcan may later decide (or a trustee may be appointed) to divest the Pechiney brazing sheet business.

Your concern is that if Alcan chooses to divest the Pechiney brazing sheet business, that operation "might be sold to a buyer who will not operate the [Ravenswood] plant successfully and will shut it down in a short period of time," which could cause widespread unemployment in the Ravenswood community. As you see it, for this reason, the Amended Final Judgment should be modified so that "Alcan would not have the option of divesting this plant."

The United States also strongly believes that if Alcan chooses to divest Pechiney's brazing sheet business, the new owner must be capable of operating the Ravenswood plant as part of an ongoing, viable new enterprise. In fact, a lynchpin of the Amended Final Judgment is the requirement that the Alcan or Pechiney brazing sheet business be divested to a person who, in the United States's judgment, is able to operate it successfully in competition against Alcan and others (*see* AFJ, §§ IV(J) and V(B)). To that end, the Amended Final Judgment requires Alcan to sell any tangible and intangible assets used in the production and sale of brazing sheet, including Pechiney's entire Ravenswood facility, and any research, development, or engineering facilities, wherever located, used to develop and produce any product – not just brazing sheet – currently rolled at the Ravenswood facility. *See* AFJ, §§ II(E)(1)-(3). Because the amended decree ensures that any new purchaser of Pechiney's brazing sheet business would obtain every tangible and intangible asset previously used by Pechiney to compete in developing, making, and selling brazing sheet and any other aluminum products made by the Ravenswood facility, there is no reason to believe that that business can only survive if it is sold to a dominant aluminum manufacturing concern, such as Alcan.²

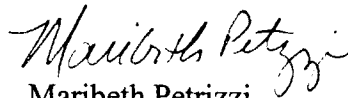
In any event, at this stage, since Alcan has not proposed a buyer for Pechiney's Ravenswood plant, much less negotiated any terms of sale, the United States sees no basis for concluding that *any* effort to divest Pechiney's brazing sheet business will fail to produce an acceptable, viable new owner capable of continuing the firm's competition against Alcan and

²You implicitly assume Alcan must be allowed to retain Pechiney's brazing sheet business because it would maintain current levels of employment and benefits at Ravenswood. However, a firm that acquires market power will be more likely to raise its prices and reduce its output, leading to a *reduction* in premerger employment levels.

others in developing, producing, and selling brazing sheet in North America.³ It would clearly be an error to reject the amended settlement on speculation that an alternative purchaser does not exist when the reasonable canvass the parties envisioned has not been allowed to run its course. *Citizens Pub. Co. v. United States*, 394 U.S. 131 (1969); *FTC v. Harbour Group Investments, LP*, 1990-2 Trade Cas. (CCH) ¶ 69,247 (D.D.C. 1990). *See generally*, Horizontal Merger Guidelines ¶ 5.2 (1990 ed.); Areeda, Hovenkamp, and Solow, Antitrust Law ¶ 952 (rev. ed.).

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,



Maribeth Petrizzi

Chief

Litigation II Section

³An “acceptable purchaser” of Pechiney’s brazing sheet business would not be a firm so burdened by its former owners’ legacy costs that it is not viable. *See* Amended Final Judgment, § IV(J): Divestiture terms must not give the defendants “the ability unreasonably to raise the [new firm’s] costs, to lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively.”



Commissioner
Virginia J. Starcher

The Jackson County Commission

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Commissioner
James L. Waybright



Commissioner
Donald Stephens

August 11, 2004

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW
Suite 3000
Washington, DC 20530

Re: Ravenswood, West Virginia - Pechiney Plant

Dear Ms. Petrizzi:

We, the County Commissioners of Jackson County, West Virginia, wrote to you on February 2, 2004 to express our great concern about the planned divestiture of the Pechiney Rolled Products plant in our County. We were commenting then on a proposed final judgment that had been submitted to the District Court in Washington.

We have learned that an amended final judgment has been filed with the Court and is now under review. That amended final judgment allows for the divestiture of the Pechiney plant, in the event that Alcan decides to sell that plant rather than selling its own brazing sheet plant. Because the amended final judgment could lead to the sale of the Pechiney plant, all of the concerns expressed in our earlier letter are still very relevant.

As we said in our earlier letter, our concern is that in the divestiture the plant might be sold to a buyer who will not operate the plant successfully and will shut it down in a short period of time. That outcome would be a disaster for our County.

Jackson County has a population of 28,000. There are approximately 12,000 in the labor force. The Pechiney plant employs 1000. Those employees, their families and dependents, together with the plant's retirees, make up a substantial portion of the County's population. The Pechiney Rolled Products plant is the single largest source of tax revenue in the County. Eighty percent of tax revenues go to the school district.

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If the plant were to close, the community could not absorb the laid off workers and they would be added to the already excessive group of unemployed. The retirees who depend on employer sponsored benefit plans would lose their medical benefits and pensions. The County and school district would lose a central pillar of their tax base. The economic burden on the county would be more than it could sustain.

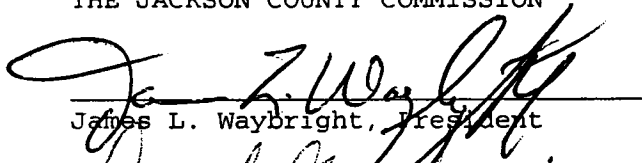
These facts demonstrate the serious basis of the our concern. We fear that a new owner would fail to operate the plant successfully and would end up liquidating the plant's assets over time or shutting down. Jobs, retirement benefits, and government services are at stake. The plant has had a difficult history and is not profitable. A new buyer who lacks resources and experience in the operation of a rolling mill, with the particular technical requirements of this plant, will not succeed.

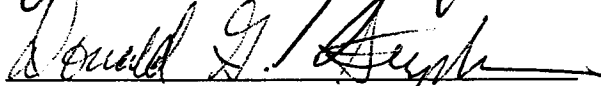
Though the amended final judgment says that a buyer must be found who could operate the plant successfully, we are doubtful that this can be achieved unless the buyer is a major aluminum producer. The only companies who could take over the plant successfully are likely to be in the brazing sheet market already, and they would therefore be disqualified from purchasing the plant.

The problem for Jackson County would be solved if Alcan to continue to own the plant. We ask that the final judgment be amended so that Alcan would not have the option of selling the Pechiney plant.

Very truly yours,

THE JACKSON COUNTY COMMISSION


James L. Waybright, President


Donald G. Stephens, Commissioner


Virginia J. Starcher, Commissioner